

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ONIS CARRABINE POTTER,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

Case No. 2:23-cv-02489-JDP (HC)

ORDER GRANTING PETITIONER'S
APPLICATION TO PROCEED *IN FORMA*
PAUPERIS

ECF No. 6

FINDINGS AND RECOMMENDATIONS
THAT THE PETITION BE DISMISSED FOR
FAILURE TO STATE A VIABLE CLAIM

ECF No. 1

Petitioner, an inmate in the Sacramento County Jail, seeks a writ of habeas corpus under 28 U.S.C. § 2254. He acknowledges, however, that he has not yet been convicted. ECF No. 1 at 1. Thus, he is not entitled to relief under 28 U.S.C. § 2254. I recommend that his petition be denied. I will grant his application to proceed *in forma pauperis*. ECF No. 6.

The petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

1 Federal habeas jurisdiction under section 2254 is available only where a petitioner is in
2 custody pursuant to a state court criminal judgment. *See Stow v. Murashige*, 389 F.3d 880, 886
3 (9th Cir. 2004). Here, petitioner acknowledges that he has not yet been convicted. ECF No. 1 at
4 1. Thus, he lacks standing to pursue habeas relief in this action. Additionally, given that state
5 court proceedings, in California and potentially in Idaho, appear to be ongoing, this action runs
6 afoul of the *Younger* abstention doctrine. Under the Supreme Court's decision in *Younger v.*
7 *Harris*, federal courts must abstain from enjoining state court criminal prosecutions in all but the
8 most exceptional circumstances. 401 U.S. 37, 45-46 (1971). Petitioner has failed to identify such
9 circumstances here.

10 Accordingly, it is ORDERED that:

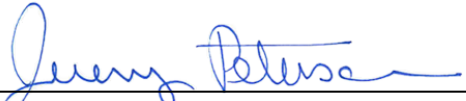
- 11 1. Petitioner's application to proceed *in forma pauperis*, ECF No. 6, is GRANTED.
- 12 2. The Clerk of Court shall assign a district judge to this action.

13 Further, it is RECOMMENDED that the petition, ECF No. 1, be DISMISSED for failure
14 to state a claim upon which relief may be granted.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
20 objections shall be served and filed within fourteen days after service of the objections. The
21 parties are advised that failure to file objections within the specified time may waive the right to
22 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
23 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24
25 IT IS SO ORDERED.

26 Dated: November 30, 2023

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28 JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

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